

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

CIVIL ACTION NO. 5: 04-128-KSF

SELLATHON, INC.,)
Plaintiff,)
v.)
MICHAEL HELMSTADTER,)
d/b/a ALPHEIUS and d/b/a)
AUCTIONMEASURES.COM,)
Defendant.)

04MBD 10189

**DEFENDANT'S MOTION TO STAY THE PROCEEDINGS
PENDING ARBITRATION**

In accordance with Fed. R. Civ. P. 7(b) and 9 U.S.C. §§ 1 through 3, defendant requests that the Court enter an Order that stays this action until the parties have completed a binding arbitration of all claims between them, as required by plaintiff's "Terms of Service" agreement. Notwithstanding a binding arbitration provision in its own electronic agreement, plaintiff filed the present litigation, and has, therefore, failed, neglected, or refused to arbitrate. The allegations contained in plaintiff's complaint address issues that must be referred to binding arbitration, under the terms of plaintiff's agreement. Accordingly, defendant has, contemporaneously with the filing of this motion, filed in the United States District Court for the District of Massachusetts, a petition to compel arbitration, in accordance with 9 U.S.C. § 4.

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PROPOSED ORDER

After a review of defendant's motion for a stay of the proceedings, and after a hearing on defendant's motion, the Court makes the following findings:

1. In accordance with the terms of a certain electronic agreement, entitled "Sellathon's Terms of Service ("Agreement), the parties have agreed to arbitrate any and all disputes arising from, or related to, the Agreement;
2. The causes of action asserted by the plaintiff in this litigation are within the scope of the Agreement's arbitration provision, and plaintiff is required to proceed to binding arbitration of these claims;
3. Defendant has filed a petition to compel arbitration, pursuant to 9 U.S.C. § 4;
4. Defendant also filed its Answer to plaintiff's complaint on July 6, 2004, and no default has entered against defendant;

Thus, defendant's motion to stay is **GRANTED**, and it is **ORDERED** that:

The present action is stayed, pursuant to 9 U.S.C. § 3, until such time as the parties have completed a bindig arbitration, as required by the Agreement, and as demanded in defendant's Petition To Compel Arbitration.

U.S.D.C. (Forster, J.)

Date: